

THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

MATTIE ROSETTA JAMES,

Debtor.

CASE NO.: 21-55484-wlh

CHAPTER 7

JUDGE WENDY L. HAGENAU

SWH 2017-1 BORROWER LP,

Movant,

vs.

MATTIE ROSETTA JAMES,

Debtor,

S. GREGORY HAYS,

Trustee,

Respondents.

CONTESTED MATTER

MOTION FOR RELIEF FROM AUTOMATIC STAY

COMES NOW, SWH 2017-1 BORROWER LP (“Movant”) and hereby moves this Court for relief from the automatic stay pursuant to 11 U.S.C. § 362(d), with respect to certain real property. In support thereof, Movant shows as follows:

1.

Mattie Rosetta James (“Debtor”) having filed a voluntary petition pursuant to 11 U.S.C. § 701, et seq., is subject to the jurisdiction of this Court.

2.

This Court has jurisdiction over this matter pursuant to 11 U.S.C. § 362.

3.

Movant is the landlord of certain real property located at 521 Thornbush Trce., Lawrenceville, GA 30046 (“Property”), leased to Debtor pursuant to a Residential Lease Agreement dated August 18, 2019 (“Lease”), with a rental rate of \$1,880.00 per month (“Rent”) for a term that began on August 19, 2020 and ended on August 18, 2021. In the event Rent is not received by the third (3rd) calendar day of each month, a late fee of \$188.00 (“Late Fee”) is incurred. In addition to rent and late fees, Debtor is also required to pay utilities as they become due.

4.

The Property is listed as Debtor’s address in the Petition [Doc. 1, p. 2].

5.

Movant seeks relief in order to continue with dispossessory proceedings (“Dispossessory”) in Gwinnett County, Georgia to dispossess Debtor, along with any other occupants of the Property, for failure to pay Rent and fees under the Lease. The Dispossessory was immediately stayed once Movant was made aware of Debtor’s voluntary petition. A copy of the Gwinnett County Superior Court Order Staying Proceedings is attached hereto as **Exhibit 1**.

6.

Debtor defaulted under the terms of the Lease by failing to pay all Rent, Late Fees, and other applicable charges under the Lease as required for September 2019 through the date of this motion. As of the date of the instant motion, Debtor owes a total of \$50,697.48. Debtor

continues to accrue arrearages of Rent, Late Fees, utilities, and other applicable charges.

7.

Debtor has caused Movant undue hardship. Movant is unable to continue with the Dispossessory and exercise its state law remedies due to the automatic stay and has incurred costly attorney fees as a result of Debtor's actions and filings.

8.

Because Debtor has demonstrated a continuing default and a clear inability to make payments required under the Lease and has not submitted any documentation to the contrary under the provisions of the bankruptcy code, Movant is not adequately protected. For the foregoing reasons, Movant asserts that cause exists sufficient to waive the requirements of Bankruptcy Rule 4001(a)(3).

10.

Because there is no equitable or legal interest in the Property which could benefit the Estate and such property is not part of the Estate, the Trustee's interest should be deemed abandoned, the Lease rejected, and the stay should be lifted with regard to Movant to allow it to continue with the Dispossessory to dispossess Debtor along with Debtor's personal property and, to the extent permitted by law, obtain a monetary judgment against Debtor for unpaid post-petition Rent while Debtor remains in possession of the Property.

11.

Because the Lease provides that Debtor is responsible for Movant's attorney's fees in pursuing legal action, Movant is entitled to reasonable attorney's fees from Debtor.

WHEREFORE, Movant prays for the following relief:

- (A) An Order granting Movant relief from the automatic stay entered under 11 U.S.C. § 362 for all purposes allowed by applicable law, including but not limited to, authorizing Movant to exercise its state law remedies, specifically to continue the Dispossessory against Debtor and all other occupants of the Property and remove all personal property and personal effects therefrom and to seek a monetary judgment for any post-petition amounts due under the Lease to the extent permitted by law and by this Court;
- (B) That the Lease be deemed rejected;
- (C) The Court award Movant reasonable attorney's fees and costs for bringing the instant motion;
- (D) The Court waive the 14-day stay of Bankruptcy Rule 4001(a)(3); and
- (E) For such other and further relief as the Court deems just and equitable.

Dated: September 15, 2021

Respectfully Submitted,

/s/ Lynn M. Wilson
Lynn M. Wilson, Esq.
Georgia Bar No. 768852

/s/ Brandi N. Wade
Brandi N. Wade, Esq.
Georgia Bar No. 868917

Counsel for Movant

**Goggans, Stutzman, Hudson,
Wilson & Mize, LLP**
990 Hammond Drive, Suite 300
Atlanta, Georgia 30328
Telephone: (404) 255-6900
Facsimile: (404) 843-2317
lwilson@gshattorneys.com
bwade@gshattorneys.com

Exhibit 1

E-FILED IN OFFICE - SR
CLERK OF SUPERIOR COURT
GWINNETT COUNTY, GEORGIA
20-A-00421-3
7/28/2021 9:08 AM
TIANA P. GARNER, CLERK

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

SWH 20171 BORROWER LP
INVITATION HOMES,

Plaintiff,

v.

FREDERICK ASHFORD and
MATTIE JAMES,

Defendant.


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Civil Action File No. 20-A-00421-3

ORDER STAYING PROCEEDINGS

The above-styled case came before the Court for a hearing on Defendants' appeal from the entry of a Writ of Possession in Plaintiff's favor in the Magistrate Court of Gwinnett County on July 26, 2021. On July 20, 2021, Defendant Mattie James filed a Motion for Continuance. That same day, the Court entered an Order deny that motion. On July 23, 2021, Defendant Mattie James filed a petition for bankruptcy in the United States Bankruptcy Court for the Northern District of Georgia in case number 21-55484. Said filing operates as an automatic stay of further proceedings against the bankrupt party in the above-styled action. Parties desiring to reopen this case or to challenge the authenticity, scope, or continued duration of the underlying bankruptcy stay shall file a written motion.

IT IS SO ORDERED this 27th day of July, 2021.



Jon W. Setzer
Judge, Gwinnett Superior Court, by designation

The Clerk shall stamp-file in the Order and mail copies to (at their addresses of record):

Brandi Wade, Attorney for Plaintiff
Frederick Ashford, Defendant
Mattie James, Defendant

THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO.: 21-55484-wlh
MATTIE ROSETTA JAMES,	CHAPTER 7
Debtor.	JUDGE WENDY L. HAGENAU
SWH 2017-1 BORROWER LP, Movant, vs.	CONTESTED MATTER
MATTIE ROSETTA JAMES, Debtor,	
S. GREGORY HAYS, Trustee, Respondents.	

REQUEST FOR HEARING

PLEASE TAKE NOTICE that SWH 2017-1 BORROWER LP, Movant herein, has filed a Motion for Relief from Automatic Stay, dated September 15, 2021, and related papers with the Court seeking an order modifying the automatic stay.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the motion in **Courtroom 1403, Richard B. Russell Federal Building and U.S. Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303, at 9:30 a.m. on October 14, 2021.** ["This matter will be called telephonically; if the matter is to be heard by the Judge, it will be heard telephonically immediately at the conclusion of the calendar call. Please check the Judge's website under the "Hearing Information" tab for more information.](#)

Your rights may be affected by the Court's ruling on these pleadings. You should read the

pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you filed a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that the Clerk receives it at least two (2) business days before the hearing. The address of the Clerk's office is: **Clerk, United States Bankruptcy Court, Room 1403, 75 Ted Turner Drive, S.W., Atlanta, Georgia 30303.** You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the Motion for Relief from Automatic Stay cannot be held within thirty (30) days, Movants waive the requirement for holding a preliminary hearing within thirty (30) days of filing the motion and agrees to a hearing on the earliest possible date. If the Court cannot render a final decision within sixty (60) days of the date of the request, Movants waive the requirement that a final decision be issued within that period.

Dated: September 15, 2021

Respectfully Submitted,

/s/ Lynn M. Wilson
Lynn M. Wilson, Esq.
Georgia Bar No. 768852

/s/ Brandi N. Wade
Brandi N. Wade, Esq.
Georgia Bar No. 868917
Counsel for Movant

**Goggans, Stutzman, Hudson,
Wilson & Mize, LLP**
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Atlanta, Georgia 30328
Telephone: (404) 255-6900
Facsimile: (404) 843-2317
lwilson@gshattorneys.com
bwade@gshattorneys.com

THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO.: 21-55484-wlh
MATTIE ROSETTA JAMES,	CHAPTER 17
Debtor.	JUDGE WENDY L. HAGENAU
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SWH 2017-1 BORROWER LP, Movant, vs.	CONTESTED MATTER
MATTIE ROSETTA JAMES, Debtor,	
S. Gregory Hays, Trustee, Respondents.	

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of Movant's **MOTION FOR RELIEF FROM AUTOMATIC STAY** and **REQUEST FOR HEARING** electronically or by depositing same in the United States First Mail in a properly addressed envelope to each with adequate postage thereon as follows:

MATTIE ROSETTA JAMES
521 Thornbush Trce.
Lawrenceville, GA 30046

SHANNON C. WORTHY
Stanton and Worthy, LLC
547 Ponce de Leon Avenue NE
Suite 150
Atlanta, GA 30308

S. GREGORY HAYS
2964 Peachtree Road
Suite 555
Atlanta, GA 30305

Office of the United States Trustee
362 Richard Russell Building
75 Ted Turner Drive, SW
Atlanta, GA 30303

Respectfully Submitted,

/s/ Lynn M. Wilson
Lynn M. Wilson, Esq.
Georgia Bar No. 768852

/s/ Brandi N. Wade
Brandi N. Wade, Esq.
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Counsel for Movant

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lwilson@gshattorneys.com
bwade@gshattorneys.com

DISTRIBUTION LIST

Debtor

MATTIE ROSETTA JAMES
521 Thornbush Trce
Lawrenceville, GA 30046

Debtor's Counsel

SHANNON C. WORTHY
Stanton and Worthy, LLC
547 Ponce de Leon Avenue NE
Suite 150
Atlanta, GA 30308

Trustee

S. GREGORY HAYS
2964 Peachtree Road
Suite 555
Atlanta, GA 30305

Office of the United States Trustee
362 Richard Russell Building
75 Ted Turner Drive, SW
Atlanta, GA 30303

Movant's Counsel

LYNN M. WILSON
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